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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,377	09/20/2000	Alexander G. Dickinson	48556.00005	6149
23767	7590	04/21/2005	EXAMINER	
PRESTON GATES ELLIS & ROVELAS MEEDS LLP 1735 NEW YORK AVENUE, NW, SUITE 500 WASHINGTON, DC 20006			WRIGHT, NORMAN M	
			ART UNIT	PAPER NUMBER
			2134	

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/666,377	DICKINSON ET AL.
	Examiner	Art Unit
	Norman M. Wright	2134

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 November 2004.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-42 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-42 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-415)  
Paper No(s)/Mail Date. **NORMAN M. WRIGHT**  
**PRIMARY EXAMINER**

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1-42 are present for examination.

### ***Response to Amendment***

2. The declaration and affidavits filed on 11/29/04 under 37 CFR 1.131 is sufficient to overcome the Wood et al., U.S. Pat. No. 6,691,232 reference.
3. The declaration and affidavits filed on 11/29/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wood et al., U.S. Pat. No. 6,691,232 reference.
4. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the 8/5/1999 reference. The affidavits filed fails to show a reduction to practice of the claims features as a whole (exemplary clm. 1), of particular note is the lacking of any teaching regarding the claimed features of obtaining circumstantial data associated with the authentication attempt, and determining a level of trust associated with the authentication attempt. The affidavit does however show that the biometric data may be obtained for a user during an authentication attempt. Therefore, the evidence is not sufficient to overcome the Wood '232 reference.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 12-42 are rejected under 35 U.S.C. 102(e) as being anticipated by Wood et al., U.S. Pat. No. 6,691,232, hereinafter '232.

7. The rejection is being maintained, for the specifics of the rejection see the previous office action, mailed date 6/28/04.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood '232 in view of Khan et al., U.S. Pat. No. 6,401,206, hereinafter '206.

10. The rejection is being maintained, for the specifics of the rejection see the previous office action, mailed date 6/28/04.

***Response to Amendment***

11. *Arguments with respect to the appropriateness of date of Wood 232 are rendered moot.*

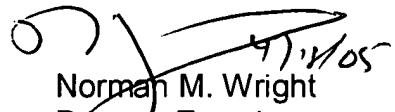
***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norman M. Wright whose telephone number is (703) 305-9586. The examiner can normally be reached on 5/4/9 compressed week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Morse can be reached on (703) 308-4789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



47,1105  
Norman M. Wright  
Primary Examiner  
Art Unit 2134